

# NEWS LETTER

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### COOPERATION AGREEMENT BETWEEN THE CNDH AND THE DEPARTMENT OF PUBLIC SECURITY

The Mexican National Commission of Human Rights (CNDH) and the Department of Public Security signed a cooperation agreement, through which, as of May 20, federal inmates over the age of 70 years old who might find themselves in a vulnerable situation may finish serving their sentence at home. This benefit will not be granted to those found to be guilty of abduction and/or organized crime.

During the signing of the agreement, National Ombudsman Dr. José Luis Soberanes Fernández stated that the security of the population is an issue of the utmost importance in the national agenda and it requires proposals and solutions that will help impede the increase in delinquency rates and will discourage impunity, and, at the same time, will address other public security issues.

Before the Secretary of Public Security, the Human Rights Assistant Attorney General at the Republic's Attorney General's Office and the General Director of the National Institute of Senior Citizens, Dr. Soberanes Fernández pointed out that the benefit provided to imprisoned senior citizens by the replacement of their sentence, should be interpreted as an act of justice, in order to prevent them from spending the rest of their lives behind bars.

In addition, Dr. José Luis Soberanes Fernández, declared that imprisoned senior citizens face a progressive state of vulnerability, since they do not represent a menace to society or to the former victims, therefore, prison becomes an unnecessary and even inhumane form of punishment to a degree that it seems irrational to keep a person captive in preventive prison or punished through the deprivation of his/her liberty.

The National Ombudsman also favors a plan for state congresses to carry out all the corresponding legal amendments in order for court of equity inmates, also 70 years old or older, to be able to receive, considering the exceptions specified by law, similar benefits provided by a replacement sentence. He expressed concern for the cases of pregnant women who are in prison and said that the CNDH has already submitted a proposal to the House of Senators so that they may also be allowed to serve their time through a replacement sentence.

The signed agreement establishes that, in order to be eligible for the aforementioned benefit, the following requirements must be first met: to be over 70 years old; that the Interdisciplinary Technical Council of the Correctional Facility submit proof that the inmate cannot serve his/her sentence as a consequence of his/her age; that, according to the criteria of the Department of Prevention and Social Readjustment, the inmate is no longer capable of incurring in criminal acts; that his/her sentence is not related to organized crime and/or abduction; that he/she may be allowed to finish serving his/her sentence at home, under the supervision of the Department of Prevention and Social Readjustment; that he/she has already paid his/her debt to society and, therefore, repaired any damage caused, and has obtained a favorable report by the Republic's General Attorney's Office.

### RECOMENDATIONS

Recommendation 9/2005

19 de mayo de 2005

Case: Mr. Alejandro Martínez, Mr. Jesús González and Mr. Gabriel Sánchez Sánchez

Responsible Authority: The Constitutional Governor of the State of Colima and the Republic's General Attorney (PGR)

On July 27, 2001, this National Commission received a written complaint by Mrs. Diana Martínez Dueñas, stating that, on June 30 that year, her brother Alejandro Martínez Dueñas, accompanied by Mr. Jesús González Medina, were detained in an extremely violent manner by alleged agents of the Federal Judicial Police, in the city of Colima, Colima, and that, to date, her relative's whereabouts are still unknown.

In addition, on August 8, 2001, we received a written complaint submitted by Mr. Jesús González Valdovinos, who denounced the disappearance of his son Jesús González Medina, who, according to the complaint, was detained on June 30, 2001, in the city of Colima, Colima, probably by "federal judicial agents and the State itself". His whereabouts are as yet unknown.

Investigations carried out by this National Commission revealed that, in addition to the two aggrieved parties mentioned previously, Mr. Gabriel Sánchez Sánchez also disappeared under similar circumstances, in terms of time and place of disappearance. His whereabouts are still unknown.

The logical-legal analysis of the evidence allowed this National Organism to determine that, in fact, Mr. Jesús González Medina was detained on June 30, 2001 in the city of Colima. He was transferred later to an isolated area, where he was subjected to cruel and degrading treatment by members of the Ministerial Police of the Attorney General's Office of the State of Colima, along with other nine people, among which two active members of said Agency were clearly identified, as were two additional members belonging to the same agency, but from the State of Michoacán. As a result of these events, currently, Mr. González Medina's whereabouts remain unknown.

In a similar manner, the aforementioned analysis revealed that, although it is true that the detention of Mr. Alejandro Martínez Dueñas and Mr. Gabriel Sánchez Sánchez could not be certified as authenticated, it is also true that the agents of the Public Ministry responsible for putting together the preliminary investigations as a result of the denunciations submitted by the aggrieved parties, neglected to carry out and order the execution of all actions related to the accreditation of the body of crime and the probable responsibility of the accused.

As a result of the previously mentioned events, this National Commission determined that public officers working for the General Attorney's Office of the State of Colima violated Mr. Jesús González Medina's rights to liberty, personal integrity, lawfulness, legal security, access to justice, defense and due process, which together constitute the assumptions involved in the crime known as forced disappearance, which involves depriving the aggrieved party of his freedom, hiding his whereabouts and isolating him from legal protection.

In the same regard, this National Commission determined that, regarding Mr. Alejandro Martínez Dueñas and Gabriel Sánchez Sánchez, the public officers of the General Attorney Office violated the rights of lawfulness, legal security, and access to justice of the aggrieved parties as well as of their relatives, all of the above as a consequence of their performing their duties in an inappropriate manner, in other words, breaching their public duties as law enforcers, since the described acts of negligence proved that they were not carrying out their professional activities in a lawful, honest, impartial and efficient manner.

As a result of the facts described above, on May, 2005, this National Commission issued Recommendation 9/2005, addressed to the Governor of the State of Colima and the Republic's General Attorney, which suggested the following:

To the Governor of the State of Colima, considering that, up until now, public officers PR-2, PR-3 and PR-4 have been fully identified, we request that he draft the necessary instructions to the General Attorney of that federative entity in order to prevent the accused from evading justice while the corresponding legal processes are carried out; on the other hand, we request that he draft instructions to the General Attorney of that Federal Entity in order to enforce the legal intervention corresponding to the internal control organism, and according to current regulations, begin an administrative investigation against public officers PR-2, PR-3 and PR-4, who executed the activities and omissions specified in the Observations chapter of this Recommendation, and, once this has occurred, punctually inform the CNDH regarding all activities carried out by said administrative authority. In the same manner, as a response to the items outlined in this Recommendation, request the execution of the measures necessary to repair damages caused to the aggrieved parties or, should it be the case, their relatives; in addition, draft instructions to the General Attorney of that federative entity so that he will authorize, as soon as possible, courses for officials in charge of enforcing the law in that institution, so that they can be fully aware of and respect the citizens' human rights, and to carry out the necessary measures in order to periodically assess the personality profiles and human rights knowledge of officials in charge of law enforcement, which would allow the identification, should it be the case, of public officers who pose a serious risk to society and prevent the appropriate execution of the responsibilities which justice procurement entails.

To the Republic's General Attorney, we request that he intervene, following legal protocols, in the internal control division of that agency, and, adhering to its regulations, start an administrative investigation among public officers mentioned previously, as a result of having verified that they took part in activities and acts of negligence specified in item C of the observations section of this Recommendation. Once the aforementioned measure has been carried out, it is important that the CNDH be informed about the measures taken by said administrative authority, from the beginning of its intervention to its completion. In addition, we request that they also authorize the involvement of the Social Representation of the Federation, in order to ensure that they begin a preliminary investigation against the officials and punctually inform this National Organism regarding the measures taken by said administrative authority, from the beginning of its intervention to its completion. In addition, that promotion be made among all public officers who are responsible for putting together prior investigations regarding the pressing need for the Public Ministry to adjust its activities in order to strictly adhere to guidelines established by penal law which regulates the Mexican judicial order; this would be achieved through training and the updating of courses, which will allow them to perform their duties in a legal, honest, loyal, impartial and efficient manner, as is demanded by that position.

Finally, both authorities were advised, considering the severity of the facts which involved the forced disappearance of an individual, to not allow further delay or hindrance of the preliminary investigation process at hand. In addition, in accordance with the cooperation agreements held between the General Attorney's Office of the State of Colima and the PGR, the possibility of creating a work group comprised by agents of the Public Ministry both of the Federation as well as of the General Attorney's Office of the State of Colima should be studied, in order to jointly make progress in the investigation effort until the correct comprisal of the inquiry is achieved, and to provide solid elements of proof to the jurisdictional agency familiar with the issue; all of the above, without prejudging which one of the institutions is responsible for continuing the execution of said investigations.

Recommendation 10/2005

Mexico, D. F., May 24, 2005

Case: Remedy of first instance by Mrs. Alicia Aguilar Dávalos and others

Responsible Authority: The Constitutional Governor of the State of Baja California

On July 23, 2004 the CNDH received a written document from Mrs. Alicia Aguilar Dávalos, Mrs. Catalina Reyes Garibo and Mrs. María Julia Gastelum Bustamante, in which they submitted a remedy of first instance against the decision of the Department of Public Security of the State of Baja California regarding the rejection of the second item of Recommendation 01/2004, issued by the Agency of Human Rights and Citizenship Protection of said federative entity, requesting that they invalidate the measure which forbids visitors of the Social Readjustment Center (Cereso) of Tijuana to introduce food to be consumed by the inmates.

Once the records which comprise said complaint were analyzed, it was determined that it was necessary to amend said advisory document issued by the Agency of Human Rights and Citizenship Protection of the State of Baja California, considering the fact that during the supervisory visit carried out at the Cereso in Tijuana, on October of 2004 by Deputy Visitors of the CNDH, irregularities were detected in regards to the distribution of food, particularly because it was not done in an equitable manner, as two dormitories with a few inmates had not received their share, therefore, it was necessary for said Visitors to point out this irregularity to the authorities in charge of the facility in order for them to arrange for an additional service.

Based on the facts stated above, on May 24, 2005, this National Commission issued Recommendation 10/2005, addressed to the Constitutional Governor of the State of Baja California, in an effort for the Secretary of Public Security to issue instructions to the Director of the Cereso in Tijuana so that he will undertake the necessary measures in order for the inmates to receive, covering the budget of that penitentiary institution, hygienic, quality food, in a sufficient amount to maintain the inmates' health.

Recommendation 11/2005

May 27 of 2005

Case: Remedy of first instance by Mrs. María del Rosario Cantoral Ramírez and Mrs. Arcides Ramón Gómez

Responsible Authority: The Honorable Constitutional Municipal Government of Tuxtla Gutiérrez, Chiapas

On June 26, 2003 this National Commission established a dossier upon receiving records in which Attorney at Law Sergio Enrique Serrano Alfaro, Director of Recommendation Follow-up and Conciliatory Proposals of the State Commission of Chiapas, submitted the detailed documents dated June 16 and July 7, 2003. These records show that personnel of this State Organism recorded the testimony

of Mrs. María del Rosario Cantoral Ramírez and Mr. Arcides Ramón Gómez, who declared they were aware that members of the Honorable Constitutional Municipal Government of Tuxtla Gutiérrez, Chiapas, had not agreed to comply, during the legal term, with Recommendation CEDH/022/2003, which it received on April 14 of 2003, therefore, at that time they presented a remedy of first instance in which they denounced the injury they were subjected to as a result of the lack of a response regarding the acceptance of the Recommendation issued by the State commission; however, on August 14, 2003, the Legal Director and the Government of the Honorable Constitutional Municipal Government of Tuxtla Gutiérrez, Chiapas, informed the State Commission, by orders of the Municipal President of Tuxtla Gutiérrez, that the aforementioned recommendation was rejected.

The logical-legal analysis performed on the evidence involved in the remedy of first instance by this National Organism detected violations to the Human Rights of lawfulness and legal security, damaging Mrs. María del Rosario Cantoral Ramírez and Arcides Ramón Gómez, upon dispossessing them of the lots that they had been assigned without previously carrying out all formalities required for this process, since all legal provisions regarding this matter were not fulfilled in order to prevent the appellants from being heard prior to receiving notice of the loss of their right to possession.

Taking into consideration all of the above, on May 27, 2005 this National Commission issued Recommendation 11/2005, addressed to the members of the Honorable Constitutional Government of Tuxtla Gutiérrez, Chiapas, in order to ensure that they grant the appellants properties with similar characteristics and dimensions as those which had been assigned to them previously, thereby not affecting the rights of purchasing third parties. In addition, the Recommendation also provides that they carry out all the necessary legal and administrative measures to ensure compliance with item two of the Recommendation CEDH/022/2003.

Recommendation 12/2005

May 27, 2005

Case; Remedy of first instance by Mr. Blas Cárdenas Ramírez

Responsible Authority: The Honorable Constitutional Municipal Government of Guadalupe in the State of Nuevo León

On October 1, 2003 this National Commission opened a file as a result of the remedy of first instance submitted by Blas Cárdenas Ramírez, Engineer, as a result of rejection of Recommendation 140/03, on behalf of the Secretary of Urban Development and Public Work of the State of Nuevo León, and also as a result of the unsatisfactory compliance with said Recommendation by the Municipal President of Guadalupe, issued in May 27, 2003, by the Human Rights Commission of that federative entity.

Initially, the Municipal President of Guadalupe, Nuevo León, accepted the Recommendation, however, on August 5, 2003 it was reported that he did not accept the fourth recommended item, claiming that Cordones Monterrey, S. A. de C. V. corporation is an industry that has been operating since 1964, far before the appellant lived in the adjacent house, in addition to the fact that the level of noise in terms of decibels generated by said corporation comply with rule NOM-081-ECOL/94. On the other hand, the Department of Urban Development and Public Works of the State of Nuevo León did not commit to the acceptance of Recommendation 140/03, claiming that the request had been made solely in terms of collaboration.

The analysis carried out by this National Commission on the documents which comprise this remedy of first instance revealed that the State Department of Urban Development and Public Works at the time complied with both items in the Recommendation that were addressed, and the municipal authority acknowledged the compliance with items two and three of Recommendation 140/03, therefore, the CNDH is only referring to items one and four of said recommendation, addressed to the Municipal President of Guadalupe in the State of Nuevo León, seeking to encourage the Head of the Main Office of Construction Permits and Land Use to respond to the complaint submitted by the appellant on April 19, 2002, and to ensure that instructions be issued so that, in accordance with the applicable regulations, he prescribe disciplinary measures against the company Cordones Monterrey, S. A. de C. V., for not possessing a land use permit, respectively.

Taking all of the above into consideration, on May 27, 2005 the CNDH issued Recommendation 12/2005, addressed to the Honorable Constitutional Municipal Government of Guadalupe in the State of Nuevo León, instructing that he respect the right to petition of Blas Cárdenas Ramírez, Engineer and order Cordones Monterrey, S. A. de C. V. corporation to exhibit their corresponding land use permit and, should they fail to present it, that the necessary measures be taken based on relevant laws and regulations.

## NATIONAL ISSUES

The President of the CNDH attended the Presentation of the Program Regarding Migratory Policies in the State of Chiapas

While attending the presentation of the Program regarding Migratory Policies of the State of Chiapas, an event headed by the Governor of that Federative Entity, and which also featured the presence of the State President of the Human Rights Commission, Dr. José Luis Soberanes Fernández, President of the Mexican National Commission of Human Rights declared his concern regarding the ruthlessness of the migratory policy of the United States, pointing out that a lack of migratory documents does not do away with a person's rights, adding that "building walls and limiting rights will never be a solution to the migration phenomenon".

In the presence of consuls, federal officials, both at a state as at a municipal level, the National Ombudsman also pointed out that migration is a complex economic and social issue that benefits everyone, not a criminal act, and he demanded that Mexican authorities comply in a timely manner with all current provisions regarding migratory issues, for example, not only should we demand humane treatment for Mexicans in the United States of America, but also provide respectful treatment for undocumented migrants who enter our national territory.

The CNDH inaugurated its new citizen's assistance office in Coatzacoalcos in the State of Veracruz

On May 30, the CNDH started operations in its new office for the assistance of the public in the city of Coatzacoalcos in the State of Veracruz , in order to offer its legal assistance and complaints reception services to undocumented migrants, mostly from Central America , within this region. Currently, the CNDH has assistance offices in San Cristóbal de las Casas, Tapachula, Reynosa , Ciudad Juárez, Tijuana , Villahermosa and Nogales .

During the inauguration of the offices of the CNDH in Coatzacoalcos , the National Ombudsman demanded that Mexican authorities offer clear samples and specific results regarding the basic rights of undocumented foreigners. The issue at hand, he declared, entails not only a legal and moral obligation, but requires that authorities undertake actions focused on "strengthening our country's position more and more in an effort to achieve the dignified treatment of our compatriots in foreign lands, mainly in the United States".

Dr. Soberanes Fernández stated that Veracruz receives 10% of the inflow of migrants at a national level, while there is a 45% inflow in Chiapas and 10% in Tabasco . Taking these numbers into consideration, the CNDH has allocated more resources to this field, creating, as a result, the Fifth General Visitorship, in charge of the Program for Migrant Assistance.

After launching the National Migration Institute summons to organize a comprehensive and diverse forum regarding our migratory relationship with our neighbors, he indicated that each country has the right to determine its migrant policies, however, this fact does not eliminate the need to guarantee respect towards the human rights of migrants.

#### Training Courses

The CNDH, in adherence to the spirit encouraged by the institution in terms of promoting the investigation, education and dissemination of Human Rights, carried out, during the month of May of

2005, 140 training activities focused towards basic-level, middle-level and higher level students and professors, groups in vulnerable situations, among them, children, the elderly, women, as well as members of the armed forces, public security, law enforcement, and legal authorities, among others.

#### PUBLICATIONS

- Human Rights of Mexicans (reprint) book, Mexico , CNDH.
- Basic Human Rights Manual for Municipal Authorities, (reprint), book, Mexico , CNDH.
- Children's Rights. A Compendium of International Tools (2nd edition), book, Mexico , CNDH.
- The Mediators, the Administrative Actions and the Ethics of Public officers (Marie José Chidiac), book, Mexico , CNDH.
- Code of Behavior for Officials in Charge of Enforcing the Law, book, Mexico , CNDH.

- Statement for young people about the promotion of values: peace, mutual respect and comprehension among countries, book, Mexico , CNDH.
- Statement for young people about the promotion of values: peace, mutual respect and comprehension among countries, booklet, Mexico , CNDH.
- Basic principles regarding the use of force and firearms by officials responsible for law enforcement , booklet, Mexico , CNDH.
- Guide to the attainment of benefits from advance release of inmates (Three-page leaflet), Mexico , CNDH.
- Rights also exist during detention (three-page leaflet), Mexico , CNDH.
- Human Rights of Inmates (Three-page leaflet), Mexico , CNDH.
- Campaign for sexual rights of young men and women. Let's Make Our Rights a Reality (four-page leaflet), CNDH
- Main Rights of Disabled People (reprint) booklet , Mexico , CNDH.
- Human Rights Guide for Migrants (three-page leaflet). Mexico , CNDH.
- Medical Services and Human Rights (three-page leaflet), Mexico , CNDH.

OFFICERS

President  
José Luis Soberanes

First Visitor  
Victor Manuel Martínez Bullé-Goyri

Second Visitor  
Raúl Plascencia Villanueva

Third Visitor  
José Antonio Bernal Guerrero

Fourth Visitor  
Rodolfo Lara Ponte

Executive Secretary  
Salvador Campos Icardo

Technical Secretary of the Council  
Susana Thalía Pedroza de la Llave

Executive Secretariat  
Editor: Laura Sanabria  
Deputy Director of  
E-mail: [lsanabria@cndh.org.mx](mailto:lsanabria@cndh.org.mx)

Periférico Sur No. 4118, 2º piso, Jardines del Pedregal, Delegación Álvaro Obregón, México D.F., 01900  
Teléfono : (52) 51 35 05 94  
Fax: (52) 51 35 05 95  
<http://www.cndh.org.mx>